

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

LANE B. BAXTER,

Petitioner,

v.

Case No. 04-C-1121

JUDY P. SMITH, Warden,

Respondent.

DECISION AND ORDER ON PETITIONER'S MOTION FOR RECONSIDERATION

On November 17, 2004, the petitioner, Lane B. Baxter ("Baxter"), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Accompanying his petition was an application to proceed in forma pauperis. Baxter's petition was originally assigned to the Honorable Charles N. Clevert, Jr. for processing. On September 7, 2005, Judge Clevert issued an order in which, among other things, he denied as moot Baxter's application to proceed in forma pauperis and ordered the respondent to file an answer or other responsive pleading on or before October 6, 2005. Thereafter, on October 6, 2005, the respondent filed a motion to dismiss Baxter's petition as untimely filed, claiming that the petition was not filed within the one-year statute of limitations imposed by 28 U.S.C. § 2244(d)(1). In the meantime, on September 19, 2005, Judge Clevert reassigned the case to this court based on the parties' consent to proceed before a magistrate judge. On October 21, 2005, the petitioner filed a "Brief of Petitioner to Proceed with Habeas Corpus Petition." On October 31, 2005, counsel for the respondent filed a letter with the court indicating that the respondent would not be filing a reply in support of her motion to dismiss.

In a decision and order issued on November 4, 2005, this court dismissed Baxter's petition and this action. Thereafter, on November 9, 2005, Baxter filed a motion for reconsideration. The court has now reviewed Baxter's motion. Although this court is not insensitive to the frustration expressed by Baxter in his motion, the fact remains that his habeas corpus petition was filed untimely, pursuant to 28 U.S.C. § 2244(d)(1). Nothing in Baxter's motion for reconsideration can alter that fact. Consequently, Baxter's motion for reconsideration will be denied.

NOW THEREFORE IT IS ORDERED that Baxter's motion for reconsideration be and hereby is **DENIED**.

SO ORDERED this 10th day of November 2005, at Milwaukee, Wisconsin.

/s/ William E. Callahan, Jr.
WILLIAM E. CALLAHAN, JR.
United States Magistrate Judge